

2009 DRAFTING REQUEST

Bill

Received: **04/27/2009**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Pat Kreitlow (608) 266-7511**

By/Representing: **Matt Pagel**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Public Records**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Kreitlow@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Formats and fees for access to public records

Instructions:

Per tel con w/ Matt Pagel, 4/27/09: Clarify that requester may have copy of a record in the format that the authority has it, or reduced to written form on paper. Fees are not changed by decision of an authority to contract for public services to be performed by a contractor.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 04/27/2009	nnatzke 05/05/2009		_____			
/1			mduchek 05/05/2009	_____	mbarman 05/05/2009		
/2	jkuesel 05/21/2009	nnatzke 05/26/2009	jfrantze 05/26/2009	_____	mbarman 05/26/2009	sbasford 12/08/2009	

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1/2/1	jkuesel 4/27/09	1/1 nwn 4/28					

FE Sent For:

<END>

Kuesel, Jeffery

From: Mueller, Eric
Sent: Monday, March 30, 2009 10:02 AM
To: Kuesel, Jeffery
Subject: FW: This is the language we are looking at changing. Since this affects local governments I assume it would be you?

Attachments: proposed comprehensive change.pdf

Jeff,

Sen. Kreitlow's office is requesting the attached changes to ch. 19. Am I correct in believing this is your area? Let me know if I need to send this to someone else.

Eric Mueller

From: Pagel, Matt
Sent: Monday, March 30, 2009 9:27 AM
To: Mueller, Eric
Subject: This is the language we are looking at changing. Since this affects local governments I assume it would be you?



proposed
comprehensive change

Matthew Pagel
Office of Senator Pat Kreitlow
Wisconsin State Senate - 23rd District
Room 10 South - State Capitol
PO Box 7882
Madison, WI 53703-7882
Phone: 608-266-7511 or 888-437-9436
Matt.Pagel@legis.wisconsin.gov

PUBLIC RECORDS AND PROPERTY

Go to the Wisconsin Code Archive Directory

Wis. Stat. § 19.36 (2007)

Legislative Alert: LEXSEE 2007 Wis. ALS 97 -- See section 33.

19.36. Limitations upon access and withholding.

(1) APPLICATION OF OTHER LAWS.

Any record which is specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law is exempt from disclosure under s. 19.35 (1), except that any portion of that record which contains public information is open to public inspection as provided in sub. (6)

(2) LAW ENFORCEMENT RECORDS.

Except as otherwise provided by law, whenever federal law or regulations require or as a condition to receipt of aids by this state require that any record relating to investigative information obtained for law enforcement purposes be withheld from public access, then that information is exempt from disclosure under s. 19.35 (1)

(3) CONTRACTORS' RECORDS.

Subject to sub. (12), each authority shall make available for inspection and copying under s. 19.35 (1) any record produced or collected under a contract entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority and the fees imposed upon the requester of a copy of a record that may not exceed the contractor's actual, necessary and direct cost of reproduction of the record. This subsection does not apply to the inspection or copying of a record under s. 19.35 (1) (am)

(4) COMPUTER PROGRAMS AND DATA.

A computer program, as defined in s. 16.971 (4) (c), is not subject to examination or copying under s. 19.35 (1), but the material used as input for a computer program or the material produced as a product of the computer program is subject to the right of examination and copying and, if so requested, shall be computer-readable reproduced in the same electronic digital format or file types as normally maintained by either the authority or the authority's contractor, except as otherwise provided in s. 19.35 or this section.

(5) TRADE SECRETS.

An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90 (1) (c)

(6) SEPARATION OF INFORMATION.

If a record contains information that is subject to disclosure under s. 19.35 (1) (a) or (am) and information that is not subject to such disclosure, the authority having custody of the record shall provide the information that is subject to disclosure and delete the information that is not subject to disclosure from the record before release.

(7) IDENTITIES OF APPLICANTS FOR PUBLIC POSITIONS.

(a) In this section, "final candidate" means each applicant for a position who is seriously considered for appointment or whose name is certified for appointment and whose name is submitted for final consideration to an authority for appointment to any state position, except a position in the classified service, or to any local public office. "Final candidate" includes, whenever there are at least 5 candidates for an office or position, each of the 5 candidates who are considered most qualified for the office or position by an authority, and whenever there are less than 5 candidates for an office or position, each such candidate. Whenever an appointment is to be made from a group of more than 5 candidates, "final candidate" also includes each candidate in the group.

(b) Every applicant for a position with any authority may indicate in writing to the authority that the applicant does not wish the authority to reveal his or her identity. Except with respect to an applicant whose name is certified for ap-

pointment to a position in the state classified service or a final candidate, if an applicant makes such an indication in writing, the authority shall not provide access to any record related to the application that may reveal the identity of the applicant.

(8) IDENTITIES OF LAW ENFORCEMENT INFORMANTS.

(a) In this subsection:

1. "Informant" means an individual who requests confidentiality from a law enforcement agency in conjunction with providing information to that agency or, pursuant to an express promise of confidentiality by a law enforcement agency or under circumstances in which a promise of confidentiality would reasonably be implied, provides information to a law enforcement agency or, is working with a law enforcement agency to obtain information, related in any case to any of the following:

a. Another person who the individual or the law enforcement agency suspects has violated, is violating or will violate a federal law, a law of any state or an ordinance of any local government.

b. Past, present or future activities that the individual or law enforcement agency believes may violate a federal law, a law of any state or an ordinance of any local government.

2. "Law enforcement agency" has the meaning given in s. 165.83 (1) (b), and includes the department of corrections.

(b) If an authority that is a law enforcement agency receives a request to inspect or copy a record or portion of a record under s. 19.35 (1) (a) that contains specific information including but not limited to a name, address, telephone number, voice recording or handwriting sample which, if disclosed, would identify an informant, the authority shall delete the portion of the record in which the information is contained or, if no portion of the record can be inspected or copied without identifying the informant, shall withhold the record unless the legal custodian of the record, designated under s. 19.33, makes a determination, at the time that the request is made, that the public interest in allowing a person to inspect, copy or receive a copy of such identifying information outweighs the harm done to the public interest by providing such access.

(9) RECORDS OF PLANS OR SPECIFICATIONS FOR STATE BUILDINGS.

Records containing plans or specifications for any state-owned or state-leased building, structure or facility or any proposed state-owned or state-leased building, structure or facility are not subject to the right of inspection or copying under s. 19.35 (1) except as the department of administration otherwise provides by rule.

(10) EMPLOYEE PERSONNEL RECORDS.

Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35 (1) to records containing the following information, except to an employee or the employees representative to the extent required under s. 103.13 or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain under ch. 111 or pursuant to a collective bargaining agreement under ch. 111:

(a) Information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an employee, unless the employee authorizes the authority to provide access to such information.

(b) Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation.

(c) Information pertaining to an employee's employment examination, except an examination score if access to that score is not otherwise prohibited.

(d) Information relating to one or more specific employees that is used by an authority or by the employer of the employees for staff management planning, including performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters of reference, or other comments or ratings relating to employees.

(11) RECORDS OF AN INDIVIDUAL HOLDING A LOCAL PUBLIC OFFICE OR A STATE PUBLIC OFFICE.

Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35 (1) to records, except to an individual to the extent required under s. 103.13, containing information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an individual who holds a local public office or a state public office, unless the individual authorizes the authority to provide access to such information. This subsection does not apply to the home address of an individual who holds an elective public office or to the home address of an individual who, as a condition of employment, is required to reside in a specified location.

(12) INFORMATION RELATING TO CERTAIN EMPLOYEES.

Unless access is specifically authorized or required by statute, an authority shall not provide access to a record prepared or provided by an employer performing work on a project to which s. 66.0903, 103.49, or 103.50 applies, or on which the employer is otherwise required to pay prevailing wages, if that record contains the name or other personally identifiable information relating to an employee of that employer, unless the employee authorizes the authority to provide access to that information. In this subsection, "personally identifiable information" does not include an employee's work classification, hours of work, or wage or benefit payments received for work on such a project.

(13) FINANCIAL IDENTIFYING INFORMATION.

An authority shall not provide access to personally identifiable data that contains an individual's account or customer number with a financial institution, as defined in s. 895.505 (1) (b) [s. 134.97 (1) (b)], including credit card numbers, debit card numbers, checking account numbers, or draft account numbers, unless specifically required by law.

HISTORY: History: 1981 c. 335; 1985 a. 236; 1991 a. 39, 269, 317; 1993 a. 93; 1995 a. 27; 2001 a. 16; 2003 a. 33, 47; 2005 a. 59, 253.

NOTES:

Notes supplied by the State of Wisconsin.

Sub. (2) does not require providing access to payroll records of subcontractors of a prime contractor of a public construction project. *Building and Construction Trades Council v. Waunakee Community School District*, 221 Wis. 2d 575, 585 N.W.2d 726 (Ct. App. 1999), 97-3282.

Production of an analog audio tape was insufficient under sub. (4) when the requester asked for examination and copying of the original digital audio tape. *State ex rel. Milwaukee Police Association v. Jones*, 2000 WI App 146, 237 Wis. 2d 840, 615 N.W.2d 190, 98-3629.

Requests for university admissions records focusing on test scores, class rank, grade point average, race, gender, ethnicity, and socio-economic background was not a request for personally identifiable information and release was not barred by federal law or public policy. That the requests would require the university to redact information from thousands of documents under s. 19.36 (6) did not essentially require the university to create new records and, as such, did not provide grounds for denying the request under s. 19.35 (1) (L). *Osborn v. Board of Regents of the University of Wisconsin System*, 2002 WI 83, 254 Wis. 2d 266, 647 N.W.2d 158, 00-2861.

"Investigation" in sub. (10) (b) includes only that conducted by the public authority itself as a prelude to possible employee disciplinary action. An investigation achieves its "disposition" when the authority acts to impose discipline on an employee as a result of the investigation, regardless of whether the employee elects to pursue grievance arbitration or another review mechanism that may be available. *Local 2489 v. Rock County*, 2004 WI App 210, 277 Wis. 2d 208, 689 N.W.2d 644, 03-3101. See also, *Zellner v. Cedarburg School District*, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 06-1143.

Portable document format, "PDF," reproductions of original records maintained in a computer database by an authority were insufficient and the requester was entitled under sub. (4) to access to the database for purposes of examination and copying of the source data. *WIREdata, Inc. v. Village of Sussex*, 2007 WI App 22, 298 Wis. 2d 743, 729 N.W.2d 757, 05-1473.

Separation costs must be borne by the agency. 72 Atty. Gen. 99.

A computerized compilation of bibliographic records is discussed in relation to copyright law; a requester is entitled to a copy of a computer tape or a printout of information on the tape. 75 Atty. Gen. 133 (1986).

Wis. Stat. § 19.36

An exemption to the federal Freedom of Information Act was not incorporated under sub. (1). 77 Atty. Gen. 20.

Sub. (7) is an exception to the public records law and should be narrowly construed. In sub. (7) "applicant" and "candidate" are synonymous. "Final candidates" are the five most qualified unless there are less than five applicants, in which case all are final candidates. 81 Atty. Gen. 37.

Public access to law enforcement records. Fitzgerald. 68 MLR 705 (1985).

CASE NOTES:

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

NOTE: 2003 Wis. Act 47, which affects this section, contains extensive explanatory notes.

LexisNexis (R) Notes:

CASE NOTES

1. Wis. Stat. § 19.36(6) requires the records custodian to provide the information requested that is subject to disclosure and to delete or redact the information requested that is not. *Osborn v. Bd. of Regents*, 2002 WI 83, 254 Wis. 2d 266, 647 N.W.2d 158, 2002 Wisc. LEXIS 480 (2002).

2. Release of school bus drivers' names and drivers' license numbers was proper where the public policy favored the release, and the invasion of privacy was slight. *Atlas Transit, Inc. v. Korte*, 2001 WI App 286, 249 Wis. 2d 242, 638 N.W.2d 625, 2001 Wisc. App. LEXIS 1158 (2001), review denied by 2002 WI 23, 250 Wis. 2d 558, 643 N.W.2d 95, 2002 Wisc. LEXIS 113 (2002), review denied by 2002 WI 23, 250 Wis. 2d 558, 643 N.W.2d 95, 2002 Wisc. LEXIS 117 (2002).

3. Where a developer petitioned for a writ of mandamus to compel a town to comply with its records request in connection with an application for a zoning permit, the circuit court erred by conducting a balancing test, relying on Wis. Stat. § 19.81, the open meetings law, to determine whether it was in the public interest to allow inspection of all documents relating to the denial of the zoning variance because the attorney-client privilege was an exception to the open records law as contemplated by Wis. Stat. §§ 19.35 and 19.36. *GPS, Inc. v. Town of St. Germain*, 2001 WI App 224, 247 Wis. 2d 990, 635 N.W.2d 27, 2001 Wisc. App. LEXIS 799 (2001).

4. Circuit court correctly determined that a city was required, under Wisconsin's open records law, Wis. Stat. § 19.31 to § 19.39, to produce a digital recording of a 911 call for a police association's examination and copying; under Wis. Stat. § 19.36(4), the city's production of an analog copy of the call did not satisfy the association's open records request for examination and copying of the original recording. *State ex rel. Milwaukee Police Ass'n v. Jones*, 237 Wis. 2d 840, 615 N.W.2d 190, 2000 WI App 146, 2000 Wisc. App. LEXIS 552 (2000).

5. Appellant was not entitled to the sought-after information under the contractors' records provision of the open records law, Wis. Stat. § 19.36(3), because the purchaser of the bonds in question did not contract to perform any duty for appellee village other than to underwrite the bond issue; the purchaser's only obligation under that agreement was to purchase the bonds; anything beyond that, such as the purchaser's eventual sale of the bonds to others, was undertaken for the purchaser's own purposes and its own benefit, not the village's, so the municipality could expect nothing more unless it specifically required, as a sale condition, information to be provided if the bonds were resold, which it did not. *Ma-chotka v. Village of W. Salem*, 233 Wis. 2d 106, 607 N.W.2d 319, 2000 WI App 43, 2000 Wisc. App. LEXIS 19 (2000), review denied by 234 Wis. 2d 178, 612 N.W.2d 734, 2000 Wisc. LEXIS 152 (Wis. 2000).

Wis. Stat. § 19.36

6. Trial court correctly granted summary judgment dismissing an inmate's petition for a writ of mandamus to compel a custodian of records for the state parole commission to release certain documents contained in the inmate's parole file because, based on the undisputed facts, the custodian of records properly determined that the public interest in protecting individuals who supplied information to the parole commission about the inmate outweighed the public interest in disclosing the requested documents; the appellate court recognized that while Wis. Stat. § 19.36 was not directly applicable to the case, § 19.36(8) indicated that protecting the reasonable expectations of confidentiality of one who had provided information to the government, even though there was no express promise of confidentiality, was an appropriate consideration to weigh against disclosure. . *State ex rel. Bergmann v. Faust*, 226 Wis. 2d 273, 595 N.W.2d 75, 1999 Wisc. App. LEXIS 358 (Wis. Ct. App. 1999).

7. Open records law, considered in light of the prevailing wage rate law, did not require a school district to obtain the payroll records of certain subcontractors working on a school construction project and to provide them to a building and construction trades council; the "contractors' records" provision of the open records law, Wis. Stat. § 19.36(3), only reached such records as were produced or collected under the terms of the contract between the school district and its contractor, not the separate contracts between the contractor and its subcontractors. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 585 N.W.2d 726, 2000 WI App 251, 1998 Wisc. App. LEXIS 991 (1998).

8. Where an inmate was a plaintiff in a civil action involving the Wisconsin Department of Corrections (DOC), the custodian properly denied the inmate access to certain DOC responses in the civil action requested pursuant to Wis. Stat. § 19.36 because many of the records were within the lawyer-client privilege under Wis. Stat. § 905.03(2) and were exempt from disclosure even though they had been widely distributed within the DOC. *State ex rel. Richards v. Records Custodian, Dep't of Corr.*, 179 Wis. 2d 502, 508 N.W.2d 74, 1993 Wisc. App. LEXIS 1193 (Wis. Ct. App. 1993).

9. Wis. Stat. § 346.70(4)(f) creates a limited exception to the common law rule that the prosecution may withhold investigative material from a criminal defendant; the exception is limited to the material described in that statute, and it follows that such an accident report and the materials described in that statute are subject to access under the open records law, Wis. Stat. § 19.31 through § 19.39, unless some other statute restricts the right of access. *State ex rel. Young v. Shaw*, 165 Wis. 2d 276, 477 N.W.2d 340, 1991 Wisc. App. LEXIS 1359 (Wis. Ct. App. 1991).

10. Compact disc (CD) and a memo created by a school district, which included adult images from a teacher's school computer, did not fall within the statutory exception to disclosure for pending disciplinary records under Wis. Stat. § 19.36(10)(b) since the investigation of the teacher's conduct was concluded when his employment was terminated. Because the investigation of the teacher was "disposed of" when he was terminated, the CD and the memo were not exempt from disclosure under Wis. Stat. § 19.36(10)(b). *Zellner v. Cedarburg Sch. Dist.*, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 2007 Wisc. LEXIS 51, 26 I.E.R. Cas. (BNA) 115, 35 Media L. Rep. (BNA) 1815, 83 U.S.P.Q.2d (BNA) 1085 (2007).

11. Indictment sufficiently alleged that defendant, a real estate broker, committed honest services fraud under 18 U.S.C.S. § 1346 by disclosing bid information and taking a kickback in connection with the sale of the state building; any question as to the applicability of the disclosure provisions of Wis. Stat. § 19.36(1) and (3) of the Wisconsin Open Records Law and the exception under Wis. Stat. § 16.75(2m)(f) to defendant's disclosure of information was an issue for trial and did not provide a basis for dismissal of the indictment. Defendant did not establish that the Open Records Law was applicable given that Wis. Stat. § 19.36(3) placed the responsibility for disclosure on agencies, not contractors such as defendant. *United States v. Lupton*, 2007 U.S. Dist. LEXIS 90549 (E.D. Wis. Dec. 10 2007).

12. Trial court properly denied appellants' request for an injunction preventing the release of records by the department of natural resources (DNR) pertaining to a DNR warden's license plate check of a law enforcement officer because the records did not fall into any statutory exception, and the public interest weighed in favor of disclosure under Wis. Stat. §

Wis. Stat. § 19.36

19.36(10)(d), (b). *Kroeplin v. Wis. Dep't of Natural Res.*, 2006 WI App 227, 297 Wis. 2d 254, 725 N.W.2d 286, 2006 Wisc. App. LEXIS 948, 25 I.E.R. Cas. (BNA) 564, 34 Media L. Rep. (BNA) 2556 (2006), review denied by 2007 WI 59, 299 Wis. 2d 325, 731 N.W.2d 636, 2007 Wisc. LEXIS 103 (2007), review denied by 2007 WI 59, 299 Wis. 2d 326, 731 N.W.2d 636, 2007 Wisc. LEXIS 133 (2007).

13. In data company's action against municipalities seeking property assessment records under the open records law, Wis. Stat. § 19.31 et seq., the municipalities were the they were responsible for the open records law violations when they denied the company's request and instead provided "PDF," or portable document files in a format created and maintained by independent contractors in a computer database. As the responsible governmental authorities, the municipalities were required to pay the costs, fees, and damages assessed for the open records violations, not their independent contractors who maintained the database. *WIREdata, Inc. v. Village of Sussex*, 2007 WI App 22, 298 Wis. 2d 743, 729 N.W.2d 757, 2007 Wisc. App. LEXIS 7 (2007).

14. In data company's action against municipalities seeking property assessment records under the open records law, Wis. Stat. § 19.31 et seq., the municipalities were the they were responsible for the open records law violations when they denied the company's request and instead provided "PDF," or portable document files in a format created and maintained by independent contractors in a computer database. As the responsible governmental authorities, the municipalities were required to pay the costs, fees, and damages assessed for the open records violations, not their independent contractors who maintained the database. *WIREdata, Inc. v. Village of Sussex*, 2007 WI App 22, 298 Wis. 2d 743, 729 N.W.2d 757, 2007 Wisc. App. LEXIS 7 (2007).

15. Trial court correctly granted summary judgment dismissing an inmate's petition for a writ of mandamus to compel a custodian of records for the state parole commission to release certain documents contained in the inmate's parole file because, based on the undisputed facts, the custodian of records properly determined that the public interest in protecting individuals who supplied information to the parole commission about the inmate outweighed the public interest in disclosing the requested documents; the appellate court recognized that while Wis. Stat. § 19.36 was not directly applicable to the case, § 19.36(8) indicated that protecting the reasonable expectations of confidentiality of one who had provided information to the government, even though there was no express promise of confidentiality, was an appropriate consideration to weigh against disclosure. . *State ex rel. Bergmann v. Faust*, 226 Wis. 2d 273, 595 N.W.2d 75, 1999 Wisc. App. LEXIS 358 (Wis. Ct. App. 1999).

16. Trial court properly dismissed a union's complaint to enjoin the sheriff from releasing records about union members (law enforcement employees under investigation) as the union failed to establish any genuine public interest in keeping the records from public view, beyond the generalized interest in not injuring the reputation or privacy interests of the member employees. The public interest in protecting the privacy and reputations of the employees was not a compelling one that, by itself, overrode the strong public interest in obtaining information regarding their activities while on duty. *Local 2489, AFSCME, v. Rock County*, 2004 WI App 210, 277 Wis. 2d 208, 689 N.W.2d 644, 2004 Wisc. App. LEXIS 795, 23 I.E.R. Cas. (BNA) 1742 (2004).

17. Where a developer petitioned for a writ of mandamus to compel a town to comply with its records request in connection with an application for a zoning permit, the circuit court erred by conducting a balancing test, relying on Wis. Stat. § 19.81, the open meetings law, to determine whether it was in the public interest to allow inspection of all documents relating to the denial of the zoning variance because the attorney-client privilege was an exception to the open records law as contemplated by Wis. Stat. §§ 19.35 and 19.36. *GPS, Inc. v. Town of St. Germain*, 2001 WI App 224, 247 Wis. 2d 990, 635 N.W.2d 27, 2001 Wisc. App. LEXIS 799 (2001).

18. Where a developer petitioned for a writ of mandamus to compel a town to comply with its records request in connection with an application for a zoning permit, the circuit court erred by conducting a balancing test, relying on Wis. Stat. § 19.81, the open meetings law, to determine whether it was in the public interest to allow inspection of all documents relating to the denial of the zoning variance because the attorney-client privilege was an exception to the open records law as contemplated by Wis. Stat. §§ 19.35 and 19.36. *GPS, Inc. v. Town of St. Germain*, 2001 WI App 224, 247 Wis. 2d 990, 635 N.W.2d 27, 2001 Wisc. App. LEXIS 799 (2001).

19. Indictment sufficiently alleged that defendant, a real estate broker, committed honest services fraud under 18 U.S.C.S. § 1346 by disclosing bid information and taking a kickback in connection with the sale of the state building; any question as to the applicability of the disclosure provisions of Wis. Stat. § 19.36(1) and (3) of the Wisconsin Open Records Law and the exception under Wis. Stat. § 16.75(2m)(f) to defendant's disclosure of information was an issue for trial and did not provide a basis for dismissal of the indictment. Defendant did not establish that the Open Records Law was applicable given that Wis. Stat. § 19.36(3) placed the responsibility for disclosure on agencies, not contractors such as defendant. *United States v. Lupton*, 2007 U.S. Dist. LEXIS 90549 (E.D. Wis. Dec. 10 2007).

20. Wis. Stat. § 346.70(4)(f) creates a limited exception to the common law rule that the prosecution may withhold investigative material from a criminal defendant; the exception is limited to the material described in that statute, and it follows that such an accident report and the materials described in that statute are subject to access under the open records law, Wis. Stat. § 19.31 through § 19.39, unless some other statute restricts the right of access. *State ex rel. Young v. Shaw*, 165 Wis. 2d 276, 477 N.W.2d 340, 1991 Wisc. App. LEXIS 1359 (Wis. Ct. App. 1991).

21. Trial court did not err in allowing the release of certain portions of a teacher's personnel records because there was no specific statutory requirement or a compelling public policy reason to prevent disclosure; the documents at issue did not relate to a current sexual misconduct investigation against the teacher, within the meaning of Wis. Stat. § 19.36(10)(b), and disclosure of the documents, especially considering information that had already been disclosed to the public, would not deprive the teacher of the right to a fair trial. *Robinson v. Racine Unified Sch. Dist.*, 277 Wis. 2d 876, 690 N.W.2d 886, 2004 Wisc. App. LEXIS 924 (Wis. Ct. App. 2004).

22. Trial court did not err in allowing the release of certain portions of a teacher's personnel records because there was no specific statutory requirement or a compelling public policy reason to prevent disclosure; the documents at issue did not relate to a current sexual misconduct investigation against the teacher, within the meaning of Wis. Stat. § 19.36(10)(b), and disclosure of the documents, especially considering information that had already been disclosed to the public, would not deprive the teacher of the right to a fair trial. *Robinson v. Racine Unified Sch. Dist.*, 277 Wis. 2d 876, 690 N.W.2d 886, 2004 Wisc. App. LEXIS 924 (Wis. Ct. App. 2004).

23. Interim grades were pupil records under Wis. Stat. § 118.125. and were exempt from public access and disclosure, even to the student herself, under Wis. Stat. § 19.36(1). *State ex rel. Blum v. Bd. of Educ., Sch. Dist of Johnson Creek*, 209 Wis. 2d 377, 565 N.W.2d 140, 1997 Wisc. App. LEXIS 220 (Wis. Ct. App. 1997).

24. Appellant was not entitled to the sought-after information under the contractors' records provision of the open records law, Wis. Stat. § 19.36(3), because the purchaser of the bonds in question did not contract to perform any duty for appellee village other than to underwrite the bond issue; the purchaser's only obligation under that agreement was to purchase the bonds; anything beyond that, such as the purchaser's eventual sale of the bonds to others, was undertaken for the purchaser's own purposes and its own benefit, not the village's, so the municipality could expect nothing more unless it specifically required, as a sale condition, information to be provided if the bonds were resold, which it did not. *Machotka v. Village of W. Salem*, 233 Wis. 2d 106, 607 N.W.2d 319, 2000 WI App 43, 2000 Wisc. App. LEXIS 19 (2000), review denied by 234 Wis. 2d 178, 612 N.W.2d 734, 2000 Wisc. LEXIS 152 (Wis. 2000).

25. Open records law, considered in light of the prevailing wage rate law, did not require a school district to obtain the payroll records of certain subcontractors working on a school construction project and to provide them to a building and construction trades council; the "contractors' records" provision of the open records law, Wis. Stat. § 19.36(3), only reached such records as were produced or collected under the terms of the contract between the school district and its contractor, not the separate contracts between the contractor and its subcontractors. *Bldg. & Constr. Trades Council v. Waunakee Cmty. Sch. Dist.*, 221 Wis. 2d 575, 585 N.W.2d 726, 2000 WI App 251, 1998 Wisc. App. LEXIS 991 (1998).

OPINIONS OF ATTORNEY GENERAL

1. CAPTION: OAG 10-84, 1984 Wisc. AG LEXIS 33; 73 Op. Atty Gen. Wis. 37.

2. The public records law permits the Department of Regulation and Licensing to refuse to disclose records relating to complaints against health care professionals while the matters are merely "under investigation"; good faith disclosure of the same will not expose the custodian to liability for damages; and prospective continuing requests for records are not contemplated by the public records law, OAG 10-84, 1984 Wisc. AG LEXIS 33; 73 Op. Atty Gen. Wis. 37.

3. CAPTION: OAG 5-84, 1984 Wisc. AG LEXIS 35; 73 Op. Atty Gen. Wis. 20.

4. Public records relating to employee grievances are not generally exempt from disclosure under the public records law, and nondisclosure must be justified on a case-by-case basis, OAG 5-84, 1984 Wisc. AG LEXIS 35; 73 Op. Atty Gen. Wis. 20.

5. CAPTION: OAG 2-85, 1985 Wisc. AG LEXIS 49; 74 Op. Atty Gen. Wis. 4.

6. Prosecutors' case files are not subject to access under the public records laws, OAG 2-85, 1985 Wisc. AG LEXIS 49; 74 Op. Atty Gen. Wis. 4.

7. CAPTION: OAG 1-85, 1985 Wisc. AG LEXIS 50; 74 Op. Atty Gen. Wis. 1.

8. Access to public records by parties to civil litigation, including administrative proceedings, must be accomplished through applicable means of discovery, OAG 1-85, 1985 Wisc. AG LEXIS 50; 74 Op. Atty Gen. Wis. 1.

9. CAPTION: OAG 8-88, 1988 Wisc. AG LEXIS 8.

10. Under current law the authority of the Department of Veterans Affairs to release veterans loan status information to lenders and credit reporting agencies is very limited, OAG 8-88, 1988 Wisc. AG LEXIS 8.

11. Words And Phrases; Section 19.36(7), Stats, is an exception to the public records law and, therefore, should be narrowly construed. As used in that statute the terms "applicant" and "candidate" are synonymous. Definition of "final candidate" discussed. OAG 6-93, OAG 6-93, 1993 Wisc. AG LEXIS 14; 81 Op. Atty Gen. Wis. 37.

LAW REVIEWS

1. 1994 Wis. L. Rev. 719, TOWARD A MORE OPEN AND ACCOUNTABLE GOVERNMENT: A CALL FOR OPTIMAL DISCLOSURE UNDER THE WISCONSIN OPEN RECORDS LAW.
2. 1996 Wis. L. Rev. 295, COMMENT: APPLYING OPEN RECORDS POLICY TO WISCONSIN DISTRICT ATTORNEYS: CAN CHARGING GUIDELINES PROMOTE PUBLIC AWARENESS?
3. 2002 Wis. L. Rev. 1197, COMMENT: ACCESS DENIED: HOW WOZNICKI V. ERICKSON REVERSED THE STATUTORY PRESUMPTION OF OPENNESS IN THE WISCONSIN OPEN RECORDS LAW.

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Mandatory Government Redaction of Personal Information

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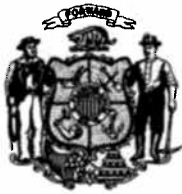
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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2784/1

JTK...:|:....

nwn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV
X-ref ✓

①

Gen.

AN ACT ...; relating to: the format and fees for obtaining copies of public records. ✓

Analysis by the Legislative Reference Bureau

Currently, unless otherwise provided by law, any requester has a right to receive a copy of a public record that appears in written form. In addition, a requester is specifically permitted to obtain a copy of a record that is not in a readily comprehensible form reduced to written form on paper, and a requester may also obtain a transcript in lieu of a record that recorded on audio tape, and may obtain a photograph of a record the form of which does not permit copying. This bill clarifies, in addition, that a requester is entitled to receive a copy of an accessible public record in the same format in which the record is maintained by its custodian, regardless of whether the record appears in written form.

Currently, the maximum fees that a governmental unit or officer may charge for obtaining copies of a public record are prescribed by law, unless a specific law prescribes the fee for obtaining a copy of a particular record or authorizes a governmental unit or officer to prescribe a fee for obtaining a copy of a particular record without limitation. The fact that a governmental unit or officer enters into a contract with a private person under which records are produced or collected does not change the law. This bill provides specifically that if public record is produced or collected by a private person pursuant to a contract entered into by a governmental unit or officer with that person, the authorized fees for obtaining a copy of the record are not altered as a result of the contract.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** ~~19.35~~ (1) (b) of the statutes is amended to read:

2 19.35 (1) (b) Except as provided in par. (f) and as otherwise provided by law,
3 any requester has a right to inspect a record and to make or receive a copy of a record
4 ~~which appears in written form.~~ A requester is entitled to receive a copy of an
5 accessible record in the same format in which the record is maintained by the
6 custodian, unless the requester requests a different format authorized under this
7 subsection. If a requester appears personally to request a copy of a record that
8 permits photocopying, the authority having custody of the record may, at its option,
9 permit the requester to photocopy the record or provide the requester with a copy
10 substantially as readable as the original.

History: 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133; 1999 a. 9; 2001 a. 16; 2005 a. 344.

11 **SECTION 2.** 19.35 (1) (f) of the statutes is amended to read:

12 19.35 (1) (f) Except as otherwise provided by law, any requester has a right to
13 inspect any record not specified in pars. ~~(b)~~ (c) to (e) the form of which does not permit
14 copying. If a requester requests permission to photograph the record, the authority
15 having custody of the record may permit the requester to photograph the record. If
16 a requester requests that a photograph of the record be provided, the authority shall
17 provide a good quality photograph of the record.

History: 1981 c. 335, 391; 1991 a. 39, 1991 a. 269 ss. 34am, 40am; 1993 a. 93; 1995 a. 77, 158; 1997 a. 94, 133; 1999 a. 9; 2001 a. 16; 2005 a. 344.

18 **SECTION 3.** 19.35 (3) (g) of the statutes is created to read:

19 19.35 (3) (g) If a record is produced or collected by a person who is not an
20 authority pursuant to a contract entered into by that person with an authority, the
21 authorized fees for obtaining a copy of the record are not altered as a result of the
22 contract.

23 (END)

Kuesel, Jeffery

From: Pagel, Matt
Sent: Tuesday, May 19, 2009 2:58 PM
To: Kuesel, Jeffery
Subject: LRB 09-2784/1

Jeff, after talking with the realtors who brought this to our attention the one other change, in -- Section 3, page 2 can we see if we can get this section revised to state the following (2 options):

✓ Option #1-- 19.35 (3) (g) If a record is produced or collected by a person who is not an authority pursuant to a contract entered into by that person with an authority, the authorized fees for obtaining a copy of the record may not exceed the actual, necessary and direct cost of reproduction of the record by the person or entity who performs the task of making the reproduction.

OR

Option #2 -- 19.35 (3) (g) If a record is produced or collected by a person who is not an authority pursuant to a contract entered into by that person with an authority, "the person may not impose a fee upon the requestor of a copy of a record that exceeds the person's actual, necessary and direct cost of reproducing the record."

This language is comes from Wis. Stat. sec. 19.35(3)(a), which is the fee section for local governments, and accomplishes the primary objective of the legislation, which is to apply the same fee standards to contractors that currently apply to local governments themselves.

This was obviously there suggestion at getting at the fees to be the same let me know your thoughts.

Matthew Pagel
Office of Senator Pat Kreitlow
Wisconsin State Senate - 23rd District
Room 10 South - State Capitol
PO Box 7882
Madison, WI 53703-7882
Phone: 608-266-7511 or 888-437-9436
Matt.Pagel@legis.wisconsin.gov



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2784/1 ✓
JTK:nwn:md

2009 BILL

SA ✓
Regen.

- 1 AN ACT *to amend* 19.35 (1) (b) and 19.35 (1) (f); and *to create* 19.35 (3) (g) of the
2 statutes; **relating to:** the format and fees for obtaining copies of public records.

Analysis by the Legislative Reference Bureau

Currently, unless otherwise provided by law, any requester has a right to receive a copy of a public record that appears in written form. In addition, a requester is specifically permitted to obtain a copy of a record that is not in a readily comprehensible form reduced to written form on paper, and a requester may also obtain a transcript in lieu of a record that is recorded on audio tape, and may obtain a photograph of a record the form of which does not permit copying. This bill clarifies, in addition, that unless otherwise provided by law, a requester is entitled to receive a copy of a public record the form of which permits copying in the same format in which the record is maintained by its custodian, regardless of whether the record appears in written form.

> Currently, the maximum fees that a governmental unit or officer may charge
> for obtaining copies of a public record are prescribed by law, unless a specific law
prescribes the fee for obtaining a copy of a particular record or authorizes a
governmental unit or officer to prescribe a fee for obtaining a copy of a particular
record without limitation. The fact that a governmental unit or officer enters into
a contract with a private person under which records are produced or collected does
not change the law. This bill provides specifically that if a public record is produced
or collected by a private person pursuant to a contract entered into by a governmental

BILL

May not exceed the actual, necessary and direct cost of reproduction or transcription of the record by the person who performs the task of the reproduction or transcription unless a fee is otherwise established or authorized to be established by law. unit or officer with that person, the authorized fees for obtaining a copy of the record are not altered as a result of the contract.

makes

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 19.35 (1) (b) of the statutes is amended to read:

2 19.35 (1) (b) Except as ~~provided in par. (b) and~~ otherwise provided by law,
3 any requester has a right to inspect a record and to make or receive a copy of a record
4 which appears in written form in the same format in which the record is maintained
5 by the custodian, unless the requester requests a different format authorized under
6 this subsection. If a requester appears personally to request a copy of a record that
7 permits photocopying, the authority having custody of the record may, at its option,
8 permit the requester to photocopy the record or provide the requester with a copy
9 substantially as readable as the original. ✓

10 **SECTION 2.** 19.35 (1) (f) of the statutes is amended to read:

11 19.35 (1) (f) ~~Except~~ ^{↓ ↓ Notwithstanding par. (b) and except} as otherwise provided by law, any requester has a right to
12 inspect any record not specified in pars. (b) (c) to (e) the form of which does not permit
13 copying. If a requester requests permission to photograph the record, the authority
14 having custody of the record may permit the requester to photograph the record. If
15 a requester requests that a photograph of the record be provided, the authority shall
16 provide a good quality photograph of the record. ✓

17 **SECTION 3.** 19.35 (3) (g) of the statutes is created to read:

18 19.35 (3) (g) ~~if~~ ^{↓ Notwithstanding par. (a) and if} a record is produced or collected by a person who is not an
19 authority pursuant to a contract entered into by that person with an authority, the

BILL

1 authorized fees for obtaining a copy of the record ~~are not altered as a result of the~~ ^{may not exceed the actual,}
2 ~~contract.~~ ^{necessary and direct cost of reproduction or transcription of}
3 ~~of the record incurred by the person who performs the task of making~~ ^{the reproduction or transcription, unless a fee is otherwise}
established or authorized to be established by law. ✓

(End)

Parisi, Lori

From: Saxler, Charles
Sent: Tuesday, December 08, 2009 11:50 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-2784/2 Topic: Formats and fees for access to public records

Please Jacket LRB 09-2784/2 for the SENATE.